

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

January 16, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

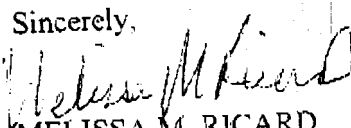
RE: Docket No. 458-08-0221/TABC vs. ROBERTO JORGE PEREZ
BUDDY'S GROCERIES INC.

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,


MELISSA M. RICARD
Administrative Law Judge

MMR/mar

Enclosure

Sandra K. Patton, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Jose Maria Alvarez, Attorney for Respondent, 501 North Britton, Rio Grande, TX 78582 - **VIA REGULAR MAIL**

DOCKET NO. 458-08-0221**TEXAS ALCOHOLIC BEVERAGE
COMMISSION****VS.****ROBERTO JORGE PEREZ
D/B/A BUDDY'S GROCERIES,
INC., Respondent**§
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§**BEFORE THE STATE OFFICE****OF****ADMINISTRATIVE HEARINGS****PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC or the Commission) brought this enforcement action against Roberto Jorge Perez d/b/a Buddy's Groceries (Respondent) for offenses committed in violation of the Texas Alcoholic Beverage Code. The Respondent did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the Respondent's permit/license issued by the TABC be cancelled for cause.

PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The hearing in this matter was convened on November 12, 2007, at the offices of the State Office of Administrative Hearings (SOAH) in Corpus Christi, Nueces County, Texas, by Melissa M. Ricard, Administrative Law Judge (ALJ). TABC's Staff was represented by its counsel, Sandra K. Patton. The Respondent did not make an appearance at the hearing. Because the hearing proceeded on a default basis and TABC's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact below.

II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

The Texas Administrative Code, at 1 TEX. ADMIN. CODE (Rules) in § 155.55, provides that if a party does not appear for a hearing, the factual allegations contained in the notice of hearing will be

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deemed as admitted. Therefore, as described in the findings of fact, it is deemed as admitted that the Respondent or its agent, servant or employee with criminal negligence sold, dispensed, or delivered an alcoholic beverage to a minor. This action violated TEX. ALCO. BEV. CODE ANN CODE (CODE) § 106.03. Therefore, Code § 11.61 authorizes the Commission to cancel Respondent's permit.

The notice of hearing, dated September 21, 2007, in bold lettering, states, "if you fail to appear at the hearing, the Commission will proceed without you and the allegation in this notice will be deemed admitted as true, and the relief sought may be granted by default." The Rules authorize service of the notice of hearing by sending it to the party's address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, and by regular mail to Respondent's address, as shown by the agency's records. Further, the notice of hearing was sent to the Respondent's attorney of record. On November 1, 2007, J.M. "Chuy" Alvarez, attorney of record for the Respondent, filed with SOAH a notice of appearance with an intent to appear at the hearing.

III. RECOMMENDATION

The allegation that Respondent violated Code § 106.13 is admitted as true. The Respondent's permit history was admitted as part of the record, which shows that the Respondent has six other violations, four of which are for sale of alcoholic beverages to minors. Staff recommended that Respondent's license be canceled, and the ALJ agreed with that recommendation.

IV. FINDINGS OF FACT

Permit BQ-237330 was issued to Roberto Jorge Perez d/b/a Buddy's Groceries (Respondent) by the Texas Alcoholic Beverage Commission (TABC). The mailing address of Respondent is 204 Eisenhower Street, Rio Grande City, Starr County, Texas, 78582.

On September 21, 2007, TABC's Staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the Respondent by certified mail, return receipt requested, and mailed the notice to Respondent's address as shown in the agency's records.

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3. On the same date, TABC's Staff sent a notice of hearing regarding the violations of the Texas Alcoholic Beverage Code to the attorney of record for the Respondent, Jesus Maria Alvarez, 501 North Britton, Rio Grande, Texas, 78582. The notice was sent to the attorney's facsimile number, (956) 487- 7521.

4. The notice of hearing contained a statement of the time, location, date, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the TABC.

The notice of hearing sent by return receipt requested mail was signed for by the Respondent and the green acknowledgment card showing this signature was returned to the TABC on October 1, 2007.

6. The notice of hearing contained the following language in capital letters in 12-point boldface type:

If you fail to appear at the hearing, the Commission will proceed without you and the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.

7. On October 2, 2007 the State Office of Administrative Hearings issued Prehearing Order No. 1, specifying that the matter would be heard on November 12, 2007 at 11:00 a.m. at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. The order required the parties to file a notice of intent to appear.

8. On November 1, 2007, J.M. "Chuy" Alvarez, filed a notice of intent to appear on behalf of the Respondent, stating that he would appear in person on the date and time that the matter was set for hearing.

9. The hearing on the merits was held on November 12, 2007, at the offices of the State Office of Administrative Hearings, Corpus Christi, Nueces County, Texas. Staff was represented by its counsel, Sandra K. Patton. The Respondent did not appear and was not represented at the hearing, and the record was closed on the same day.

10. On the day of the hearing, the Administrative Law Judge (ALJ) conducting the hearing called Mr. Alvarez' office because he failed to appear for the hearing. The ALJ was informed by an individual named Leo that Mr. Alvarez was participating in federal court in McAllen, Texas and would not be attending the hearing in Corpus Christi. Mr. Alvarez did not inform SOAH that he was unable appear and did not make any further filings.

The hearing proceeded on a default basis, and the allegations contained in the notice of hearing were deemed admitted as true.

- ## V. CONCLUSIONS OF LAW

MELISSA M. RICARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS